

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JAN ALEC WEITH,

Petitioner,

No. C 10-5252 PJH (PR)

vs.

ORDER OF DISMISSAL

CITY AND COUNTY OF SAN
FRANCISCO; District Attorney KAMELA
HARRIS; Sheriff MICHAEL HENNESSY;
and SAN FRANCISCO SUPERIOR
COURT OF THE STATE OF
CALIFORNIA,

Respondents.

This is a habeas case filed pro se by a former prisoner at the San Francisco County Jail. In response to the question in the form petition “[d]id you appeal your conviction?”, petitioner wrote “not yet” and “no notice of appeal applied for yet.” In response to a question whether he had “previously filed any petitions, applications of motion with response to this conviction in any court, state or federal,” petitioner checked the “no” box. In response to an instruction to describe each such proceeding, he did provide answers, but they all were about trial-level proceedings or events at the time of the trial, not collateral proceedings. In the initial review order, the court concluded that he had failed to plead exhaustion and dismissed the petition with leave to amend. *See Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981) (habeas petitioners must plead exhaustion).

In the same order, petitioner’s motion for leave to proceed in forma pauperis was denied and he was ordered to pay the filing fee within thirty days. Instead of doing so, he attempted to appeal. The court of appeals denied his request to proceed IFP on appeal because the appeal was frivolous and granted him twenty-one days to pay the appellate

1 filing fee. When plaintiff did not pay, the appeal was dismissed.

2 Plaintiff has not shown cause why the petition should not be dismissed for failure to
3 exhaust, and the time to do so has long since expired. He also has not paid the filing fee.

4 This case is **DISMISSED**. The clerk shall close the file.

5 **IT IS SO ORDERED.**

6 Dated: September 13, 2011.



PHYLLIS J. HAMILTON
United States District Judge